

**DECLARATION OF MAILING**  
STATE OF WASHINGTON  
MIKE KREIDLER, Insurance Commissioner  
Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to parties listed below  
DATED this 19th day of Nov 2005  
at Tumwater, Washington.  
Signed: W. Galloway

STATE OF WASHINGTON



OFFICE OF  
**INSURANCE COMMISSIONER**  
**HEARINGS UNIT**  
Fax: (360) 664-2782

Phone: (360) 725-7000  
**FILED**

NOV 14 2005

Hearings Unit, OIC  
Patricia D. Petersen  
Chief Hearing Officer

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Wendy Galloway  
Administrative Assistant  
(360) 725-7002  
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STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of: )  
DME/OP PURCHASING GROUP, INC. ) NO. G05-51  
Applicant for a Risk Purchasing Group. ) ORDER ON PREHEARING  
CONFERENCE

**TO:** Derek J. Shafer, Attorney  
Jayhawk Tower  
700 S.W. Jackson, Roof Garden Suite  
Topeka, Kansas 66603

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
James T. Odiorne, Deputy Commissioner, Company Supervision  
Carol Sureau, Deputy Commissioner, Legal Affairs  
Charles D. Brown, Sr. Staff Attorney, Legal Affairs  
P.O. Box 40255  
Olympia, Washington 98504-0255

On November 14, 2005, at 11:30 a.m., (Pacific Standard Time) a prehearing telephone conference was held upon request from Derek J. Shafer, Esquire, representing DME/OP Purchasing Group (DME/OP). The Insurance Commissioner (OIC) appeared by and through Charles D. Brown, Senior Staff Attorney in his Legal Affairs Division.

In the prehearing conference today, DME/OP acknowledged that the hearing date is currently scheduled to commence on November 18, 2005. DME/OP proposed a continuance of the hearing date to allow it to file a Motion for Summary Judgment by the hearing date instead of commencing the hearing on that date. The OIC appeared to generally oppose DME/OP's proposal: while the OIC appeared to indicate that he would possibly be willing to agree to a shortened time to have a Motion for Summary Judgment actually heard on November 18, 2005, he understood now that DME/OP was instead requesting a continuance of the hearing so that it



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could just file the Motion for Summary Judgment by November 18, 2005. The OIC indicated an unwillingness to agree to a continuance.

DME/OP filed its Request for Hearing in this matter on July 22, 2005. Accordingly, a prehearing conference was held August 24, 2005. During that prehearing conference, which included all parties, Mr. Shafer was advised by the undersigned that his client, DME/OP, must obtain adequate representation in Washington and that there may be several options available. Mr. Shafer was directed to the Washington Rules of Court and to the Washington Administrator of the Courts to determine how to obtain adequate representation for DME/OP in Washington. Finally, during this August 24 prehearing conference, the parties agreed that the hearing should commence, by telephone, on October 26, 2005.

Subsequently, DME/OP requested for various reasons not including the issue of representation, and the undersigned granted, two continuances of the hearing in this matter. The first continuance, which was granted over the objection of the OIC, was until November 9, 2005 and the second continuance until November 18, 2005. On each occasion, Mr. Shafer was reminded that he must obtain proper representation for DME/OP for the upcoming hearing. In addition, Wendy Galloway, Administrative Assistant to the undersigned, left messages or spoke with Mr. Shafer on a minimum of four occasions (on October 31, 2005, November 2, 2005, November 4, 2005 and on November 7, 2005) to remind him that he needed to obtain proper representation in Washington for DME/OP.

At this late date, only today, Mr. Shafer appears to be appealing to the undersigned and the Hearings Unit for advice about representation. Mr. Shafer is advised that it is his responsibility, as DME/OP's attorney in Kansas, to ensure that he has obtained proper representation in Washington for DME/OP and should he have not obtained adequate representation for his client at the time of hearing then an Order of Default will be entered against DME/OP at that time.

With regard to DME/OP's proposal today which is outlined above, said request was denied: said request constitutes a third request for a continuance, for which no reasonable basis has been given. Further, no sufficient reason was provided why a Motion for Summary Judgment could not have been presented timely, in accordance with the Administrative Procedure Act and Washington Rules of Court.

Based upon the above activity,

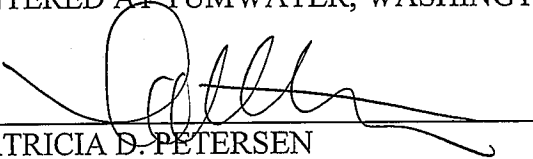
**IT IS HEREBY ORDERED** that DME/OP's request for a continuance for additional time to now file a Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED** that the hearing shall place, as scheduled, commencing at 10:00 a.m. (PST) on November 18, 2005. Further, Mr. Shafer has been advised during prehearing conference today that, should he still not have obtained adequate representation in Washington for DME/OP by the time of hearing, an Order of Default shall be entered against it. Should Mr. Shafer choose to continue to attempt to represent DME/OP himself in Washington, he shall provide adequate legal argument at the time of hearing as to why he is so authorized;

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however, if it is determined that he is not so authorized then an Order of Default shall be entered against DME/OP.

ENTERED AT TUMWATER, WASHINGTON, this 14<sup>th</sup> day of November, 2005.

  
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PATRICIA D. PETERSEN  
Presiding Officer

STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

FILED

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In the Matter of: )

**DME/OP PURCHASING GROUP, INC.** )

NO. G05-51

Applicant for a Risk Purchasing Group. )

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

APPLICANTS' RESPONSE TO ORDER ON  
PREHEARING CONFERENCE

NOW on this 15<sup>th</sup> day of November, 2005, comes applicant for registration as a Risk Purchasing Group and responds to the Order on Prehearing Conference issued herein on November 14, 2005. The purpose of this response is to clarify the record and the position of DME/OP Purchasing Group, Inc (hereinafter "DME/OP") herein.

DME/OP respectfully requested a telephonic conference with the Hearing Officer and Mr. Brown to explore the opportunity to file a Motion for Summary Judgment as to the issues of law herein. DME/OP respectfully suggested that the hearing be continued pending the determination upon that Motion for Summary Judgment as an appropriate procedural step based upon the determination as to the issues of law as would be presented in the Motion for Summary Judgment. The suggestion was not made in order to prolong these proceedings, but rather was a good faith suggestion that was perceived as a methodology to more quickly resolve this matter.

At the telephonic Prehearing Conference on August 24, 2005, counsel for DME/OP inquired as to the necessity for obtaining or associating with counsel authorized to practice in the State of Washington. Counsel for DME/OP was advised of a potential procedure whereby an appropriate corporate representative of the applicant could appear, but that counsel could assist in such pro se appearance. Later, counsel for DME/OP was advised that the Hearing Officer wanted to be apprised as to the manner in which representation for DME/OP is to be provided, not that DME/OP was required to obtain proper representation. Counsel for DME/OP acknowledges receipt of phone messages left by the Administrative Assistant to the Hearing Officer and respectfully advises that each phone message was timely responded to with further inquiry. Counsel for DME/OP was later apprised by the Administrative Assistant that some of his return messages were not timely received due to equipment malfunction at the Hearing Unit.

Counsel for DME/OP understands that it is not the obligation of the Hearing Unit to advise him or his client as to representation. Counsel for DME/OP advises, as indicated in the attached email from him to Ms. Galloway of November 14, 2005, that he has been advised that the Washington State Bar Association, the agency which has the obligation and duty of administering the "limited admission" aspects on behalf of the Washington Administrator for the Courts, has advised that they deem such rule inapplicable to administrative hearings and further that if a pro hac vice application were to be submitted with the appropriate \$250.00 fee, such application and fee would be returned by them to the applicant as inappropriate.

DME/OP is prepared for hearing at the scheduled time. Its request for a continuance was to accommodate the anticipated Motion for Summary Judgment herein. It is the contention of DME/OP that a Motion for Summary Judgment or a Motion for Partial Summary Judgment is appropriate at any time that the pleadings, depositions, answer to interrogatories and admissions on file, together with affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The applicant has only recently received discovery responses from OIC and upon receipt of those discovery responses determined that a Motion for Summary Judgment appears appropriate as a methodology for resolution herein.

WHEREFORE, applicant respectfully requests that an additional telephonic prehearing conference be scheduled immediately for discussion of the ongoing procedural issues as to representation and Summary Judgment.

Respectfully submitted,

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Derek J. Shafer, #08790  
Jayhawk Tower  
700 S.W. Jackson  
Roof Garden Suite  
Topeka, Kansas 66603  
785-233-5004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via email on the 15<sup>th</sup> day of November, 2005, to the following:

Mr. Charles Brown, Attorney  
Office of Insurance Commissioner  
State of Washington  
5000 Capitol Boulevard  
P.O. Box 40255  
Olympia, WA 98504-1255

and the original sent via email and fax to:

Patricia D. Petersen  
Chief Hearing Officer  
Office of Insurance Commissioner  
State of Washington  
5000 Capitol Boulevard  
P.O. Box 40255  
Olympia, WA 98504-1255  
By serving Wendy Galloway, her Administrative Assistant

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Derek J. Shafer, #08790